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IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. **78 - 368**

CARROLL T. GLORIOSO, *Petitioner*,
v.
UNITED STATES OF AMERICA, *Respondent*.

JAN BRIAN ABRAMS, *Petitioner*,
v.
UNITED STATES OF AMERICA, *Respondent*.

MERRILL ROSENFELD, *Petitioner*,
v.
UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE
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FOR THE FOURTH CIRCUIT

Petitioners, Carroll T. Glorioso, Jan Brian Abrams and Merrill Rosenfeld, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered August 2, 1978.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is printed in Appendix A, hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered August 2, 1978. The

jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1), (1948).

QUESTIONS PRESENTED FOR REVIEW

A Maryland State Statute precludes State Police officers from acting within an incorporated municipality which maintains a police force except under specific enunciated exceptions. On appeal from a conviction for Federal Gambling Laws, the first question presented for review is:

Did the Court err in ruling State Police did not violate Maryland Law in obtaining probable cause, and did the Court err in ruling Petitioners had no standing to complain on this issue.

The second question for review is whether wiretap evidence obtained by State authorities and subsequently utilized by Federal authorities was subject to suppression because of the failure of state authorities to affirmatively state in their application for a wiretap order the full facts concerning prior applications for wiretap orders, as required by Maryland Law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment of the Constitution of the United States which provides as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Additionally, because of the underlying involvement of Maryland State Police officials in the action sought

to be reviewed, the first section of the Fourteenth Amendment to the Constitution of the United States, also is involved. Such section provides:

"All persons born or naturalized in the United States and of the State jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Omnibus Crime Control and Safe Streets Act of 1968, Title III, 18 U.S.C. §2518 (2a)

Annotated Code of Maryland, Courts Article §10-403, et seq. (1a)

STATEMENT OF CASE

On February 16, 1977, the Petitioners, Carroll T. Glorioso, Jan Brian Abrams and Merrill Rosenfeld, and others were indicted by the Federal Grand Jury for the District of Maryland for allegedly operating an illegal gambling business and for aiding and abetting in that criminal endeavor, in violation of 18 U.S.C. §1955 and 2. It was upon these alleged violations of the Federal Ganbling Laws that federal jurisdiction in the Court of first instance was based. The Petitioners entered pleas of not guilty and filed Motions to suppress all of the evidence obtained as a result of wiretap and to dismiss the Indictment which was based upon such evidence. After argument, the United States District Court for the District of Maryland denied Petitioners' Motions to suppress the evidence and dismiss the Indictments. Subsequently, Petitioners proceeded to trial upon a stipulated Statement of Facts, and were found guilty of

the charges contained in the Indictments by the United States District Court for the District of Maryland on June 2, 1977.

Based on these convictions, Petitioner Glorioso's earlier probation was revoked, after hearing.

On September 6, 1977, the United States District Court for the District of Maryland sentenced Petitioner Glorioso to a period of Five (5) years probation, said term to run consecutively with sentences imposed upon the said Petitioner on August 26, 1977, for violation of probation. For violation of probation, Petitioner Abrams was sentenced to Five (5) years imprisonment, the defendant to be confined in a jail type institution for Thirty (30) days, and the execution of the remainder of the sentence to be suspended and the defendant placed on probation for the balance of the term. Petitioner Rosenfeld was sentenced to a period of incarceration for Three (3) years, the said sentence to run consecutively with another sentence being served by the said Petitioner. All of the Petitioners duly noted appeals to the United States Court of Appeals for the Fourth Circuit.

Said appeals for Petitioners Glorioso, Abrams, and Rosenfeld were docketed in the United States Court of Appeals for the Fourth Circuit, respectively as follows: as to Petitioner Carroll T. Glorioso, Appeal Nos. 77-2306, 77-2310, 77-2311; as to Petitioner Jan Brian Abrams, Appeal No. 77-2308; and as to Petitioner Merrill Rosenfeld, Appeal No. 77-2309.

In a Per Curiam unpublished opinion dated August 2, 1978, the Fourth Circuit affirmed the order of the United States District Court for the District of Maryland.

A Statement of Facts of this case, material to the consideration of the questions presented, would be as follows.

In February of 1976, Maryland State Police Troopers were contacted by a confidential informant, who advised the Maryland State Police troopers that he had knowledge of illegal gambling operations. Based upon this information, agents of the Maryland State Police initiated surveillance of Petitioner Glorioso, among others. After a period of surveillance, agents of the Maryland State Police applied to the Circuit Court for Baltimore County for an order authorizing a wiretap of the suspects involved in the gambling operation. As a result of applications made, ex parte orders were issued permitting electronic interception of telephonic equipment used by Petitioners.

Based largely upon information gained as a result of the electronic interception of the telephonic facilities of Petitioners', Petitioners, as indicated were subsequently indicted by the Federal Grand Jury for the United States District Court for the District of Maryland, and upon dismissal of Motions to suppress the wiretap evidence, were found guilty of the charges set forth in the indictment.

ARGUMENT IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN HOLDING THAT THE ACTIONS OF AGENTS OF MARYLAND STATE POLICE UNDERTAKEN TO DEVELOP PROBABLE CAUSE TO SUPPORT WIRETAP APPLICATIONS COMPLIED WITH APPLICABLE MARYLAND LAW CONTROLLING THE ACTIVITIES OF THE MARYLAND STATE POLICE.

As a result of the decision of the Fourth Circuit Court of Appeals in these case, Nos. 77-2306, 77-2307, 77-2308, 77-2309, 77-2310, 77-2311 and 77-2312 (Fourth Circuit August 2, 1978), the Petitioners contend that the Court of Appeals has decided an important State question in a way which is in conflict with applicable Maryland State Law. The applicable Maryland State law is

Article 88B, Section 4(b) of the Annotated Code of Maryland, which provides as follows:

"(State) Police employees shall not act within the limits of any incorporated municipality which maintains a police force except (1) when in pursuit of an offender or suspected offender; (2) when in search of an offender or suspected offender wanted for a crime committed outside of the limits of the municipality, or when interviewing or seeking to interview a witness or supposed witness to such a crime; (3) when requested to act by the chief executive officer or the chief police officer of the municipality; (4) when ordered by the Governor to act within the municipality; (5) when enforcing the motor vehicles laws of this State; (6) in any building or place when ordered by the President of the Senate and the Speaker of the House of Delegates, or either of them to guard the safety legislators or the integrity of the legislative process or (7) to protect the safety of an elected State Official."

The Court of Appeals, Fourth Circuit, in its Per Curiam decision stated the following, at page 3 of said decision:

"In our opinion the district court correctly ruled that the actions of the Maryland State Police in developing the probable cause for the authorized wiretaps did not require suppression of the intercepted wire communications. We think both that Annotated Code of Maryland, Art. 88B §4(b), was not violated when the Maryland State Police conducted a part of their investigation within Baltimore City absent authorization by the Governor of Maryland, or a request from the Police Commissioner of Baltimore City, and that, in any event, defendants have no standing to assert such a violation."

The Petitioners respectfully submit that it is obvious and incontrovertible from the above opinion that the probable cause for the authorized wiretap was deve-

loped by the actions of the Maryland State Police. Clearly, when and if violation of a State law has taken place in obtaining probable cause for an authorized wiretap, we would have a pre-interception situation. See *United States v. Donovan*, 429 U.S. 413, 97 S. Ct. 658 (1977). Further, on the important issue of "standing," the Court of Appeals held that the Petitioners had no standing to assert a violation of Article 88B, Section 4(b).

The Petitioners respectfully submit that the issues decided by the Court of Appeals with respect to the applicable State law, that is, Article 88B, Section 4(b), are of such vital importance to the citizens of certain incorporated municipalities of the State of Maryland that the public interest requires that the Court resolve the questions of the rights of the citizens of Maryland, including the issue of "standing" for said citizens, when such citizens rely on the proscriptions of the applicable State law as a ground for a claim that probable cause for a wiretap was obtained illegally under the laws of said State. It is to be noted that the authorization for the wiretap in the instant case was executed under an authorization by a State Judge. In addition, the affiants in the affidavit were Maryland State Police who were subject to the provisions of Article 88B, Section 4(b).

The Petitioners earnestly contend that the issues raised in this Petition are of vital importance not only to the citizens of the State of Maryland, but of equal importance to the Nation for the reason that many states have similar statutes to Article 88B, Section 4(b), which impose restraints and limits on police within the State. Some of these states are: Ohio, see *State v. Harrison*, 251 N.E.2d 521 (1969); Virginia, see *Moore v. Oliver*, 347 F. Supp. 1313 (1972); Mississippi, see *Davis v. United States*, 409 F.2d 1095 (1969) (5th Cir.); California, see *People v. Blake*, 98 Cal. Rptr. 409; Texas, see *Irwin v. State*, 177 S.W.2d 970 and *Base v. State*, 435 S.W.2d 530 (1969).

The question of "standing" for one who asserts a violation of State law which limits jurisdiction for police is a crucial one. It is of vital importance and in the public interest for this Court to make a determination of whether Article 88B, Section 4(b) was enacted for the benefit of the police of the incorporated municipality wherein State Police have no jurisdiction (as argued by the United States Government on page 7 and 8 in its Brief submitted to the Court of Appeals) or whether said statute was enacted to place restrictions on State Police in order that the citizens of a municipality be subject to police and police power from within their municipality. The Petitioners respectfully contend that the decision of the Court of Appeals that citizens of an incorporated municipality of the State of Maryland do not have standing to assert a violation of Article 88B, Section 4(b) is illogical and unreasonable. Therefore, a decision by this Court on this issue is needed by, and would be of great benefit and enlightenment to, the citizens of Maryland, as well as to the citizens of those other states with similar statutes, for the above important reasons and the inevitable recurring importance of the questions involved.

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DID ERR IN HOLDING THAT THE APPLICATIONS FOR WIRETAP AUTHORIZATION WERE SUFFICIENT WHEN JUDGED BY THE STANDARD SET FORTH IN THE FEDERAL WIRETAP STATUTE RATHER THAN THE MORE STRINGENT PROVISIONS CONTAINED IN MARYLAND'S WIRETAP STATUTE WHICH WAS APPLICABLE TO THE ACTIVITIES OF THOSE SEEKING AUTHORIZATION.

The Petitioners maintain that the United States Court of Appeals for the Fourth Circuit committed error in affirming a decision based upon an erroneous interpretation of Maryland State Law.

Title III of the Omnibus Control and Safe Streets Act of 1968 (hereinafter referred to as Federal Statute), as amended, 18 U.S.C. §2510, et seq. provides at §2515 that:

"2515. Prohibition of use as evidence of intercepted wire or oral communications. — Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter."

From this unambiguous legislative statement, it is clear that the provisions of 18 U.S.C. §2510, et seq. provide only a *minimum* standard of legality against which all interceptions of wire or oral communications must be measured. *State v. Siegel*, 13 Md. App. 444, 285 A.2d 671 (1971), Aff'd. 266 Md. 356, 292 A.2d 86 (1972).

The Federal Statute does not confer wiretap authority upon the States, and in order for such activity to occur on a State level, each State must enact its own legislation. The provisions of the Federal Act are not self-executing upon the State. 18 U.S.C. §2516(2). Further, the only person authorized to make application is the principal prosecuting attorney of the State or political subdivision involved. 18 U.S.C. §2516(2). Therefore, in judging the validity of an application for interception, both the Federal Act and any State Statute must be considered cumulatively, and assuming the statutes are not repugnant, if the State Statute is more restrictive in establishing standards for wiretap, then the State standard must be followed. *U.S. v. Marion*, 535 F.2d 697 (C.A. N.Y., 1976); *U.S. v. Curreri*, 388 F. Supp. 607 (D.C. MD., 1974).

The Maryland Wiretap Statute is codified in the Annotated Code of Maryland, Courts and Judicial Proceedings, Article §10-401, et seq. (hereinafter the Maryland Statute). The Maryland Statute collectively provides authority for State initiated interception of wire communication as well as procedural mandates which must be followed to secure State judicial approval for such interceptions. §10-403(a) through (g) deals specifically with the nature and the quality of the information, which must be provided to Maryland State Courts when considering applications for interceptions, as follows:

"(a) Application — An ex parte order for the interception of telephonic and telegraphic communications may be issued by a judge of a circuit court, the Supreme Bench of Baltimore City, or the District Court upon the verified application of the Attorney General or a state's attorney setting forth fully the facts and circumstances upon which the application is based and stating that:

- (1) There are reasonable grounds to believe that a crime has been committed or is about to be committed.
- (2) There are reasonable grounds to believe that evidence will be obtained essential to the solution of a crime, or which may enable the prevention of a crime.
- (3) There are no other means readily available for obtaining the information.

(b) Grounds to be stated— Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(c) Prior application — The applicant must state whether any prior application has been made to obtain telephonic and telegraphic communications on the same instrument or for the same person and if a prior application exists the applicant shall disclose its current status.

- (d) Identification of line — The application and any order issued under this section shall identify as fully as possible the particular telephone or telegraph line from which the information is to be obtained and the purpose.
- (e) Examination by court — The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.
- (f) Duration of order — No order issued under this section shall be effective for longer than 30 days.
- (g) Renewal of order — Upon application of the officer who secured the original order, the court which issued the order may renew or continue the order for an additional period not to exceed 30 days."

The Petitioners submit that the Maryland Statute in 1976 was more restrictive than the Federal Statute, in that in Maryland, the applicant was required to set forth an unequivocal statement as to the existence of all prior applications involving the subject of investigation, and where appropriate, their current status. Annotated Code of Maryland, Courts and Judicial Proceedings, Article 10-403(c). The Federal Statute, on the other hand, contained (and still does) a mere knowledge requirement for the applicant, which may be found at 18 USC §2518(1)(e) as follows:

"(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places, specified in the application, and the action taken by the judge on each such application;"

Since the Maryland Statute is more restrictive, it must be controlling. 18 USC §2516; *State v. Siegel*, 13 Md. App. 444, 285 A.2d 671 (1971), Affd. 266 Md. 356,

292 A.2d 86 (1972). The language of the Maryland Statute necessarily requires the applicant to make an investigation and report the result of that investigation to a court reviewing any application for wiretap. Parenthetically, it is interesting to observe that as of July 1, 1977, the Maryland legislature, when recodifying its wiretap statute, adopted the Federal requirement of mere knowledge. Annotated Code of Maryland, Courts and Judicial Proceedings, §10-408(a)(5).

"(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each application;" (cumulative supplement, 1977)

There is no such affirmative duty placed upon the applicant under the Federal Statute, and the mere knowledge requirement is a more lenient standard than required in Maryland.

A review of the circumstances surrounding the interceptions demonstrates the Government relied totally upon the acts of Maryland State authorities in securing the information introduced at trial, and in doing so, placed full reliance upon the acts of the Maryland authorities. The Government, therefore, is bound by not only the provisions of 18 USC §2510, et seq., but also by the Annotated Code of Maryland, §10-401, et seq.

The applications for wiretap orders were made by the principal prosecuting attorney for Baltimore County, Maryland.

In the first application, the principal prosecuting attorney failed to comply with the requirements of Maryland Law by omitting a verified statement that prior applications had or had not been made, the pres-

ent status of any prior applications, and a full and complete statement of what investigation was conducted to make a determination as to the existence of any prior applications.

This failure to fully disclose to the Court the information mandated by the Maryland Statute constituted a defect of such magnitude as to require suppression of all evidence and information obtained pursuant to any order based upon such application. This result is particularly appropriate in light of the position of the Court of Appeals of Maryland that no deviation from the prescribed path of the wiretap statute, no matter how slight, will be allowed. *State v. Siegel*, 13 Md. App. 444, 285 A.2d 671 (1971), Affd. 266 Md. 356, 292 A.2d 86 (1972).

A review of the opinion of the United States Court of Appeals for the Fourth Circuit indicates that the Court's opinion was based in part upon a holding that "the wiretap authorizations were not defective because the applicant only asserted lack of knowledge of prior applications". Such a holding in light of the unequivocal language of the Maryland Statute applicable to the matter at hand, clearly indicates that a proper and important question of State law has been raised.

CONCLUSION

For the above stated reasons, the Petitioners, Carroll T. Glorioso, Jan Brian Abrams and Merrill Rosenfeld, pray this Court issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We, Kenneth J. MacFadyen and Stanley S. Cohen, counsel for Petitioners, and members of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of September, 1978, we served copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit on counsel for Respondent, by enclosing three copies thereof, first class, postage prepaid, addressed to:

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APPENDIX**OPINION**

Per Curiam:

We see no reversible error in the convictions of the several defendants for operating an illegal gambling business in violation of 18 U.S.C. §§1955 and 2.

In our opinion the district court correctly ruled that the actions of the Maryland state police in developing the probable cause for the authorized wiretaps did not require suppression of the intercepted wire communications. We think both that Annotated Code of Maryland, Art. 88B §4(b), was not violated when the Maryland state police conducted a part of their investigation within Baltimore city absent authorization by the Governor of Maryland, or a request from the Police Commissioner of Baltimore City, and that, in any event, defendants have no standing to assert such a violation. We think further that the wiretap authorizations were not defective because the applicant only asserted lack of knowledge of prior applications and, finally, that the district court correctly ruled that the averments of necessity in the applications for wiretaps were adequate.

Affirmed.

STATUTES**§ 10-403. Ex parte order for interception.**

(a) *Application.* — An ex parte order for the interception of telephonic and telegraphic communications may be issued by a judge of a circuit court, the Supreme Bench of Baltimore City, or the District Court upon the verified application of the Attorney General or a state's attorney setting forth fully the facts and circumstances upon which the application is based and stating that:

(1) There are reasonable grounds to believe that a crime has been committed or is about to be committed.

(2) There are reasonable grounds to believe that evidence will be obtained essential to the solution of a crime, or which may enable the prevention of a crime.

(3) There are no other means readily available for obtaining the information.

(b) *Grounds to be stated.* — Where statements are solely upon the information and belief of the applicant, the grounds for the belief must be given.

(c) *Prior application.* — The applicant must state whether any prior application has been made to obtain telephonic and telegraphic communications on the same instrument or for the same person and if a prior application exists the applicant shall disclose its current status.

(d) *Identification of line.* — The application and any order issued under this section shall identify as fully as possible the particular telephone or telegraph line from which the information is to be obtained and the purpose.

(e) *Examination by court.* — The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(f) *Duration of order.* — No order issued under this section shall be effective for longer than 30 days.

(g) *Renewal of order.* — Upon application of the officer who secured the original order, the court which issued the order may renew or continue the order for an additional period not to exceed 30 days. (An. Code 1957, art. 35, §94; 1973, 1st Sp. Sess., 2, §1.)

* * * * *

2518. Procedure for interception of wire or oral communications. — Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

* * * * *

(b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

* * * * *

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

* * * * *